WILLS AND ADMINISTRATION—UNDUE INFLUENCE—BURDEN OF PROOF.—The testatrix was a patient in very poor health at the sanitarium of one Dr. S. She had made a will in favor of the contestants, but a few weeks later and only a short time before her death, she made a new will in favor of the present proponent, the doctor's husband. The latter had had the will drawn under his directions and not in the presence of the testatrix, the lawyer being unknown to the latter. *Held,* a presumption of undue influence arose under the circumstances and the jury were warranted in finding for the contestants. *In re Nutt's Estate* (Cal. 1919) 185 Pac. 393.

It is well settled that no presumption of undue influence arises solely because of the existence of a confidential relationship between a testator and a beneficiary; *Graham* v. *Courtright* (1917) 180 Iowa 394, 161 N. W. 774; see *Re Smith* (1884) 95 N. Y. 516; *contra, Appeal of Kirby* (1916) 91 Conn. 40, 98 Atl. 349; but does arise when in addition to the confidential relationship it appears that the beneficiary was active in and about the preparation and execution of the will. See *Gaither* v. *Phillips* (Ala. 1917) 75 So. 295; *In re Baird's Est.* (1917) 176 Cal. 381, 168 Pac. 561. On the question of the force and effect of the "presumption" upon the burden of proof, there is some confusion. It is said that the presumption shifts the burden of proof to the proponent. This is sometimes used to mean that upon proof of the facts sufficient to raise the presumption by the contestant, it becomes incumbent upon the proponent to show by some evidence the absence of undue influence, and the failure to do so entitles the contestant as a matter of law to a verdict or finding in his favor. *Gum* v. *Reep* (1916) 275 Ill. 503, 114 N. E. 271. But by far the majority of the cases which place the burden of rebutting the presumption of undue influence upon the beneficiary cannot be considered as meaning more than that the beneficiary, in failing to introduce further evidence, runs the risk of having an adverse decision rendered by the trier of fact, *O'Brien's Appeal* (1905) 100 Me. 156, 60 Atl. 880; *In re Tutty's Will* (N. J. 1917) 102 Atl. 833, the risk of a nonpersuasion of the trier of fact remaining also on the contestant. *Leahy* v. *Timon* (Tex. 1918) 204 S. W. 1029. This latter meaning is often expressed, and more correctly it would seem, as not shifting the burden of proof at all but as merely giving all the evidence its due weight. *In re Powers* (1917) 176 App. Div. 455, 162 N. Y. Supp. 828. It is that view which the court seems to be recognizing in the instant case in refusing to interfere with the findings of fact by the jury.

WORKMEN'S COMPENSATION ACTS—MUNICIPAL EMPLOYEE—POLICEMAN.—A patrolman, who had been detailed by his superior officer to care for the prisoners in the station house, to clean the walls and floor, and to fix the electric lights, was accidentally injured in the performance of this duty. *Held,* he was not an employee of the city within the Workmen's Compensation Law. N. Y. Consol. Laws c. 67 (Laws of 1914 c. 41). *Ryan* v. *City of New York* (N. Y., Ct. of App., 1920) 62 N. Y. L. J. 1580, reversing 189 App. Div. 49, 178 N. Y. Supp. 402.

The court rested its decision on the ground that a policeman is a public officer and that his status does not change merely according to the particular work to which he may be assigned; and that the legislature, if it had intended to award compensation to the police force, would not have ignored the typical hazards of their work and rewarded the trivial ones. Regular compensation is provided for members of the force in the rules of the Police Department. For a discussion of this case see 20 Columbia Law Rev. 230.